

WRESTLING CANADA LUTTE
IN THE MATTER OF A DISCIPLINE POLICY COMPLAINT
BETWEEN:

DAVID SPINNEY - Complainant

- and -

DR. FRANK FOWLIE - Respondent

COMPLAINT REVIEW DECISION
DAVID KELLERMAN

Submissions:

DAVID SPINNEY: Self-represented

ANDRE MARIN: Counsel for Dr. Frank Fowlie

I. The Parties

1. David Spinney is the Claimant. Mr. Spinney is a volunteer wrestling coach at the University of Western Ontario
2. Frank Fowlie is the Respondent. Dr. Fowlie was the Complaints and Appeals Officer (the “CAO”) under the Wrestling Canada Safe Sport Policy Manual (the “Policy”) from September 30, 2020 to October 15, 2021.

II. The Notice of Complaint

3. Mr. Spinney filed a Notice of Complaint on March 30, 2022, which alleges the following:
 - a. Dr. Fowlie commenced civil litigation against Mr. Spinney and two (2) other individuals before the Superior Court of Ontario on March 22, 2022
 - b. Dr. Fowlie’s civil suit disclosed information which is defined as confidential under the terms of WCL’s Discipline and Complaints Policy;
 - c. Dr. Fowlie’s Statement of Claim before the Superior Court of Ontario is therefore a violation section 48 of WCL’s Discipline and Complaints Policy;
 - d. Dr. Fowlie should be sanctioned under the terms of WCL’s Discipline and Complaints Policy;
4. Mr. Spinney requests the following sanctions:
 - a. That Dr. Fowlie be suspended from the sport of wrestling for a period of four (4) years
 - b. That Dr. Fowlie be “fined in an amount serious enough to act as a deterrent to any other WCL participant who deliberately violates the confidentiality obligations of its Policy.”
 - c. That Dr. Fowlie be ordered to pay the costs Mr. Spinney incurred in relation to the breach of the policy
 - d. Any other relief the Panel may consider appropriate

III. The Facts

A. Dr. Fowlie’s Contract with WCL

5. On September 30, 2020, Dr. Fowlie and Wrestling Canada executed an Independent Contractor Services Agreement (the “Agreement”). The Agreement includes Schedule A: Statement of Work, which describes Dr. Fowlie’s tasks as the Complaints and Appeal Officer (although this term is never used in the Agreement).

6. Dr. Fowlie's Agreement stipulates that amongst other duties, his role is to receive complaints of possible breaches of the WCL's conduct policies, determine jurisdiction of these complaints, determine whether an appeal is admissible, and oversee the complaint resolution and case management processes.
7. The Agreement contains a Confidentiality Clause which reads as follows:

7. CONFIDENTIALITY

7.1. All information obtained by the Contractor from WCL as a result of this Agreement, in written, recorded or electronic form, except any information that is in the public domain, will be considered "Confidential Information" of WCL. The Contractor shall keep and shall cause the Contractor's employees and Contractor's independent Contractors (such Contractor's employees and Contractor's independent contractors referred to as "Contractor Personnel") to keep the Confidential Information confidential and, for greater certainty, but not so as to restrict the generality of the foregoing, shall not disclose or permit to be disclosed, publish or permit to be published, or provide or allow any person not authorized by this Agreement access to, any of the Confidential Information.

7.2. The Contractor acknowledges and agrees that WCL is disclosing its Confidential Information to the Contractor solely for purposes of the Contractor providing the Services and to enable the Contractor to perform its obligations to WCL under this Agreement. The Contractor will not make any other use of the Confidential Information.

7.3. The Contractor shall be permitted to disclose such Confidential Information as is required to be disclosed by it pursuant to a requirement of a governmental department or agency having jurisdiction over the Contractor or disclosure is otherwise required by operation of law, provided that the Contractor gives notice in writing to WCL of the required disclosure immediately upon it becoming advised of such required disclosure.

8. Dr. Fowlie's contract with WCL began on October 15, 2020 and was for a duration of three (3) years. During his time as CAO, Dr. Fowlie received several Notice of complaints in which Mr. Spinney was named Respondent. WCL terminated Dr. Fowlie's contract on September 16, 2021, with the termination to take effect on October 15, 2021. In doing so, WCL availed itself of clause 8.3 of the Agreement which stipulates that if WCL or Dr. Fowlie wish to terminate the Agreement for a reason not already determined therein, either party could do so by giving at least 30 days' written notice of termination to the other party.

B. Dr. Fowlie's Civil Action

9. On March 22, 2022, Dr. Fowlie filed a Statement of Claim before the Superior Court of Ontario in which he seeks damages caused by Mr. Spinney's alleged harassing and defamatory conduct. This civil suit contains allegations of Notices of Complaints received by Dr. Fowlie in his role as CAO which allege that Mr. Spinney breached WCL's Policy.
10. Paragraphs 11, 12 and 13 of the Statement of Claim read as follows:

11. Before Lucas O'Ceallachain left his job in 2020 he made two complaints to Dr. Fowlie. The first was about David Spinney and [REDACTED] being in a consensual sexual relationship. Since Mr. Spinney was [REDACTED] wrestling coach, this allegation, if true, was a violation of WCL's policies about coach-athlete relationships. The university had, some years previously, suspended Mr. Spinney while it investigated the allegations of a coach - athlete relationship. Wrestling Canada Lutte was not a party to that investigation, and Dr. Fowlie has no first-hand knowledge of its outcome.

12. Lucas O'Ceallachain also complained of harassment by Mr. Spinney. This complaint was sent by Dr. Fowlie to outside investigator Daniel Sauvageau, who brought in lawyer Erin Durant. Ms. Durant concluded the harassment complaint should be decided by a panel review. Madame Sauvageau is a retired police officer, and former coach of Canada's Gold Medal 1998 Olympic Game Women's Hockey team.

13. Lawyer Daniel Ratushny is the arbitrator who is hearing the harassment complaint as a panelist. Mr. Spinney is angry that the harassment complaint was referred to a panel.

11. The civil suit is ongoing.

C. The present Notice of Complaint

12. On March 30, 2022, WCL's current CAO, Ilan Yampolsky received a Notice of Complaint filed by Mr. Spinney against Dr. Fowlie in which the former claims that in filing a civil suit which disclosed the complaints received as a CAO, Dr. Fowlie violated section 48 of WCL's Discipline and Complaints Policy and should be sanctioned accordingly.

D. WCL Safe Sport Policy Manual

13. WCL's Discipline and Complaints Policy is part of the larger Safe Sport Policy Manual which came into effect on September 1, 2021. The Policy contains twelve (12) sections which include an Introductory Section, a section for Definitions and ten (10) policies, one of which being the Discipline and Complaints Policy, that all address the issue of Safe Sport.

IV. Questions

14. The Panel will answer the following questions:

- i. Is the information disclosed by Dr. Fowlie in his Statement of Claim considered confidential under the terms of WCL's Discipline and Complaints Policy?
- ii. Is the CAO bound by section 48 of the Discipline and Complaints Policy?
- iii. Is Dr. Fowlie a *Participant* under the Discipline and Complaints Policy?
- iv. Can the CAO be a *Respondent* under the Discipline and Complaints Policy?

V. Analysis

- i. **Is the information disclosed by Dr. Fowlie in his Statement of Claim considered confidential under the terms of WCL's Discipline and Complaints Policy?**

15. Section 48 of the Discipline and Complaints Policy makes the process instigated by a Notice of Complaint confidential. It reads as follows:

Confidentiality

48. The discipline and complaints process is confidential and involves only WCL, the Parties, the Complaints & Appeal Officer, the Discipline Panel, and any independent advisors to the Discipline Panel. Once initiated and until a decision is released, none of the Parties will disclose confidential information relating to the discipline or complaint to any person not involved in the proceedings.

16. The confidentiality of the appeal process is reiterated in nearly identical terms at section 22 of the Appeal Policy:

Confidentiality

The appeals process is confidential and involves only the Parties, the Complaints & Appeal Officer, the Panel, and any independent advisors to the Panel. Once initiated and until a decision is released, none of the Parties will disclose confidential information to any person not involved in the proceedings.

17. Dr. Fowlie included the following information in his Statement of Claim with the Superior Court of Ontario:

- a. *Lucas O'Ceallachain made two (2) complaints to Dr. Fowlie*
- b. *Dr. Fowlie received one complaint about Mr. Spinney and [REDACTED] being in a consensual sexual relationship*
- c. *Mr. Spinney was [REDACTED] wrestling coach while this relationship occurred*

- d. *Lucas O'Ceallachain also made a second complaint to Dr. Fowlie of harassment by Mr. Spinney*
 - e. *Dr. Fowlie referred the complaint to outside investigator Daniel Sauvageau*
 - f. *Sauvageau then brought in lawyer Erin Durant who concluded the harassment complaint should be decided by a panel review*
 - g. *Lawyer Daniel Ratushny is the arbitrator who is hearing the harassment complaint as a panelist*
 - h. *Mr. Spinney is angry that the harassment complaint was referred to a panel*
18. This is information which pertains to the discipline and complaints process. As such, it is deemed confidential under section 48 of the Discipline and Complaints Policy in that it either reveals the nature of the complaints, the steps taken by the CAO after a complaint was received, or facts deriving directly from the discipline and complaints process.
- ii. Is the CAO bound by section 48 of the Discipline and Complaints Policy?**
19. While the information revealed in his statement of claim is confidential, Dr. Fowlie cannot be found by the Panel to have been in violation of section 48.
20. Section 48 stipulates that the “Parties” cannot disclose confidential information relating to the process.
21. The “Parties” are defined in the Policy Definitions:
25. “Parties” – The groups involved with a dispute. In the Discipline and Complaints Policy, the Parties are the Complainant and Respondent. In the Appeal Policy, the Parties are the Appellant, Respondent, and any Affected Party.
22. The Complaints and Appeal Officer is not a party to the dispute, but rather an “Independent Third Party” as defined by the Policy Definitions at sections 8 and 18.
23. The CAO has a duty to keep confidential the information obtained during the course of a complaint, however that obligation is not rooted in section 48 of the Discipline and Complaints Policy. This obligation is governed by the CAO’s contract with WCL.
24. The Panel has no jurisdiction to render a decision which pertains to any obligations the CAO may have under the Agreement with WCL.

iii. Is Dr. Fowlie a *Participant* under the Discipline and Complaints Policy?

25. The Introduction section of the Policy states that the WCL Safe Sport Manual is applicable to all “Participants”.
26. Furthermore, clause 3 of WCL’s Discipline and Complaints Policy states:

Application of this Policy

3. *This Policy applies to all Participants.*

27. The term Participants is defined in the Definitions at section 24:

“Participants” – Refers to all categories of individual members and/or registrants defined in the Bylaws of WCL who are under WCL jurisdiction and who are subject to the UCCMS and the policies of WCL, as well as all people employed by, contracted by, or engaged in activities with, WCL including, but not limited to, employees, contractors, Athletes, coaches, instructors, officials, volunteers, managers, administrators, committee members, parents or guardians, spectators at WCL-sanctioned Events, and Directors and Officers. (our underlining)

28. At the time the Notice of Complaint was filed, Dr. Fowlie was no longer CAO, and therefore no longer under contract with WCL. The CAO is a Participant under the terms of the Safe Sport Policy Manual, but when the CAO’s contract is terminated, he can no longer be considered a Participant. Dr. Fowlie’s lasting obligations as former CAO, if any exist, would be governed by the Agreement with WCL.

iv. Can the CAO be a *Respondent* under the Discipline and Complaints Policy?

29. The Policy Definitions define “Respondent” as follows:

31. *“Respondent”* – The Participant responding to a complaint or, in the case of an appeal, the body whose decision is being appealed. (our underlining)

30. As previously explained, Dr. Fowlie is not a Participant under the terms of the Policy at the time the Notice of Complaint is filed by Mr. Spinney. Dr. Fowlie can therefore not be a Respondent as defined by the Policy.
31. Mr. Spinney has argued that the decision in WCL v. Calder applies to the present matter. The Panel does not agree. WCL v. Calder involved Participants under the terms of the Policy. Calder was a wrestling coach, he could be accepted as a

Respondent under the terms of the Policy. Lastly, Calder was a Party to a Notice of Complaint when he disclosed confidential information pertaining to that process and could therefore be considered to be in violation of section 48 of the Discipline and Complaints Policy. In the present matter, Dr. Fowlie is not a Participant, cannot be a Respondent and is not a Party to a Notice of Complaint. WCL v. Calder therefore does not apply to the present matter.

VI Decision

32. For the reasons explained herein, the Panel finds that Respondent was not in breach of section 48 of the Discipline and Complaints Policy.

33. The Panel dismisses the complaint.

34. The Panel thanks the parties for their participation.

Montreal, October 28, 2022

David Kellerman

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